REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed December 1, 2006. Applicants respectfully request reconsideration and favorable action in this case.

Section 102 Rejections

The Examiner rejects Claims 1-4, 6-7, 9-17, 19-20, and 22-27 under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. US 2003/0199315 A1 to Downes P.E. ("*Downes*"). At the outset, Applicants respectfully note that the Examiner incorporates the substance of the rejections included in the previous Office Action issued August 2, 2005, despite Applicants' traversal of those rejections. The Examiner appears to be replacing these arguments, at least in part, with arguments now presented in the "Response to Applicants' Arguments" section of this Final Office Action. To the extent the Examiner is not now relying solely on the arguments presented in the "Response to Applicants' Arguments" section, Applicants renew their traversal of the Examiner's original rejections as Applicants expressed in their previous Response to Office Action, filed November 2, 2005 ("the November 2 Response"), pp. 17-22.

Claim 1 recites:

> A method of managing bets, comprising:
> receiving one or more first type of bets, each first type having an associated bet amount and comprising a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers, the particular participant selected from a plurality of participants each participating in at least one of the plurality of events;
> receiving one or more second type of bets, each second type of bet having an associated bet amount and comprising a second bet that the total number of units earned by the particular participant in the plurality of events will fall within a second range of numbers;
> determining the total number of units earned by the particular participant based at least in part on the positioning of the particular participant in each of the plurality of events;
> determining whether the first type of bets or the second type of bets are winning bets based at least in part on whether the total number of units earned by the particular participant falls within the first range of numbers or the second range of numbers;

> determining a betting pool based at least in part on the total of the bet amounts associated with the first type of bets and the total of the bet amounts associated with the second type of bets; and
>
> determining an amount of a payout based at least in part on the betting pool and the total of the bet amounts associated with the winning bets.

Downes fails to recite, expressly or inherently, every element of Claim 1 for at least several reasons. First, *Downes* fails to disclose "receiving one or more first type of bets, each first type . . . comprising a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers" and "receiving one or more second type of bets, each second type of bet . . . comprising a second bet that the total number of units earned by the particular participant in the plurality of events will fall within a second range of numbers." Second, *Downes* fails to disclose "determining the total number of units earned by the particular participant based at least in part on the positioning of the particular participant in each of the plurality of events." Thus, as described in greater detail below, *Downes* fails to disclose every element of Claim 1.

First, *Downes* fails to disclose "receiving one or more first type of bets, each first type . . . comprising a bet *that the total number of units earned* by a particular participant over a course of a plurality of events *will fall within a first range of numbers*" and "receiving one or more second type of bets, each second type of bet . . . comprising a second bet *that the total number of units earned* by the particular participant in the plurality of events *will fall within a second range of numbers*." As Applicants indicated in the November 2 Response (p. 19), the Examiner relies upon an example entirely of the Examiner's creation to suggest that *Downes* discloses this element of Claim 1. Specifically, with respect to these elements, the Examiner asserts that:

> The first bet may be associated with quarterbacks in football that earn a number of units based upon number of completed passes in a season.
>
> ...
>
> The second bet may be associated with linebackers in football that earn a number of units based upon the number of quarterback sacks in as season.

Office Action, p. 6.

Applicants again note that *Downes* itself fails to disclose wagers associated with "quarterbacks in football that *earn a number of units* based upon [a] number of completed passes in a season" or "linebackers in football that *earn a number of units* based upon the number of quarterback sacks in a season" as described by the Examiner in his example.

Therefore, the cited reference does not support the Examiner's examples. Instead, *Downes* indicates that "[w]agers may be placed on *where an individual player's statistics will rank* compared to the statistics of other players of the same position *(e.g., 1st, 2nd, 3rd)*." ¶ 207, emphasis and underlining added. As a result, *Downes* does not disclose wagers relating to a "*total number of units earned* by a particular participant" and instead discloses wagers relating to "where a particular [participant's] statistics will rank (e.g., 1st, 2nd, 3rd) compared to other [participants] for a given period of time." ¶ 210.

In response to this argument the Examiner notes that "Downes discloses, 'a plurality of different statistics may be employed *to determine rank*' (Downes: par 252, line 7)." *Office Action*, p. 13, emphasis and underlining added. Applicants respectfully submit, however, that this does not lead to the Examiner's conclusion that "therefore prize money earned by a participant is a statistic that is taught by Downes as a means *to determine the participant's score or 'number of units earned*.'" *Office Action*, p. 13. First, Applicants note that *Downes* does not make any reference to "*the total number of units earned* by a particular participant." Additionally, *Downes* does not even discuss participant's prize money, so *Downes* clearly does not teach considering the participant's prize money in the fashion the Examiner suggests. Furthermore, Applicants respectfully note that the Examiner fails to even address the claim limitations requiring that the first type of bet comprises a "bet that the total number of units ...*will fall within a first range of numbers*" and that the second type of bet comprises a "bet that the total number of units...*will fall within a second range of numbers*" (emphasis and underlining added) and *Downes* does not disclose these limitations. As a result, *Downes* fails to disclose "receiving one or more first type of bets, each first type . . . comprising a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers" and "receiving one or more second type of bets, each second type of bet . . . comprising a second bet that the total number of units earned by the particular participant in the plurality of events will fall within a second range of numbers" as required by Claim 1.

Second, *Downes* does not disclose "determining the total number of units earned by the particular participant based at least in part on the positioning of the particular participant in each of the plurality of events." In addressing this limitation, the Examiner asserts that "[t]he positioning may be the rank of the quarterbacks/linebackers over the season." *Office*

Action, p. 3. Nonetheless, as Applicants noted in their previous Response to Office Action, even assuming for the sake of argument that this is true, the example provided by the Examiner relates to *a single rank* of each of the relevant participants *over a single season* and not to "the positioning of the particular participant in each of [a] plurality of events." Thus, even if the season is viewed as a series of games, neither the example provided by the Examiner nor *Downes* itself discloses "determining the total number of units earned by the particular participant based at least in part on the positioning of the particular participant in each of the plurality of [games]," as *Downes* discloses determining a ranking for the players only once, at the end of the season.

Applicants respectfully note that, in the Office Action, the Examiner merely reiterates this assertion without addressing the substance of Applicants' argument. Applicants respectfully remind the Examiner that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and *answer the substance of it.*" M.P.E.P. § 707.07(f) (emphasis added). Applicants request that the Examiner address the substance of Applicants' argument with respect to this aspect of the rejection as required by M.P.E.P § 707.07(f). Nonetheless, *Downes* fails to disclose "determining the total number of units earned by the particular participant based at least in part on the positioning of the particular participant in each of the plurality of events" as recited by Claim 1.

In addition, to justify the rejection of Claim 1 and other claims under 35 U.S.C. § 102, the Examiner states:

> It is well known in the art of gambling that there are no restrictions preventing the bettor from placing multiple bets on the same event, especially in a pari-mutuel betting system since the size of the winning pool is dependant [sic] of the total amount of money that is wagered. It is also well known in the art of gambling that a bettor can also have the option of placing what is called an "exotic bet" in a pari-mutuel betting system (Scarne: pg 86). There are several variety of exotic bets but they all allow you to associate more then [sic] one participant in the same game or in different games on the same bet or ticket. Therefore the applicant's claims towards "receiving one or more second type of bets" and receiving any other number of bets *are considered obvious and unpatentable*. Furthermore, any claims in reference to "determining a betting pool" based on the different "type of bets" and/or the total bet amounts *are considered obvious* to one of normal skill since that is how a pari-mutuel system works. Moreover any claims in reference to "determining the total number of units earned," determining which type of bet is a winning bet and

> "determine an amount of a payout" *are also considered obvious and unpatentable* since they are also taught by the pari-mutuel betting system.
>
> *Office Action*, p. 13-14, emphasis and underlining added.

Applicants respectfully note that, not only do these assertions not address the deficiencies identified by Applicants above, but any alleged *obviousness is not proper grounds for rejecting* claimed subject matter *under 35 U.S.C. § 102*. Therefore, this rejection is improper.

As a result, *Downes* fails to disclose, teach, or suggest every element of Claim 1. Claim 1 is thus allowable for at least these reasons. Applicants respectfully request reconsideration and allowance of Claim 1 and its dependents.

Although of differing scope from Claim 1, Claim 17 includes elements that, for reasons substantially similar to those discussed with respect to Claim 1, are not disclosed by *Downes*. Claim 17 is thus allowable. Applicants respectfully request reconsideration and allowance of Claim 17 and its dependents.

Furthermore, several of the dependents of Claim 1 include additional elements that are not disclosed by *Downes*. As one example, Claim 2 recites:

> The method of Claim 1, wherein the number of units earned by the particular participant comprises the amount of money earned by the particular participant during the course of the plurality of events.

In rejecting Claim 2, the Examiner asserts that "[t]his would be applicable to the highest money winners such as in the PGA." As Applicants noted in the November 2 Response, hypothetical examples created by the Examiner are not an appropriate basis for a rejection under 35 U.S.C. § 102(a). Furthermore, Applicants remind the Examiner that for a rejection under 35 U.S.C. § 102(a) to be appropriate "[t]he identical invention *must* be shown in *as complete detail as is contained in the...claim*." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131 (emphasis and underlining added). *Downes* clearly does not make any reference to money winners in the PGA. In fact, the only reference to "money" in *Downes* is with respect to bets placed by bettors. Applicants respectfully request that, if the Examiner intends to maintain the 35 U.S.C. § 102 rejection of Claim 2, the Examiner identify *within Downes* any discussion of "money earned by a particular participant" as required by M.P.E.P. § 2131 for a rejection under 35 U.S.C. § 102.

Section 103 Rejections

The Examiner rejects Claims 5, 8, 18, 21, and 28-52 under 35 U.S.C. § 103(a) as being unpatentable over *Downes* in view of Scarne's New Complete Guide to Gambling by John Scarne ("*Scarne*"). At the outset, Applicants respectfully note that, as with the § 102 rejections above, the Examiner incorporates the substance of the rejections presented in the previous Office Action issued August 2, 2005, despite Applicants' traversal of those rejections. The Examiner appears to be replacing these arguments, at least in part, with arguments now presented in the "Response to Applicants' Arguments" section of this Final Office Action. To the extent the Examiner is not now relying solely on the arguments presented in the "Response to Applicants' Arguments" section, however, Applicants renew their traversal of the Examiner's original rejections as Applicants expressed in the November 2 Response, pp. 22-25.

Turning to the rejections, Claim 28 recites:

> A method of managing bets, comprising:
> for each of a plurality of participants participating in one or more of a plurality of events, receiving one or more participant bets, each participant bet having an associated bet amount and comprising a bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular index number before the number of units earned by any other of the plurality of participants exceeds the particular index number;
> for each of the plurality of participants, determining the total number of units earned by that participant based at least in part on the positioning of that participant in at least a portion of the plurality of events in which that participant participates;
> determining as the winning participant the participant for which the number of units earned by that participant exceeds the particular index number before the number of units earned by any other of the participants exceeds the particular index number; and
> identifying winning participant bets based at least in part on the determined winning participant.

As the Examiner concedes, *Downes* fails to teach the limitations relating to "'will [sic] exceed a particular index number before the number of units earned by any other of the plurality of participants exceeds the particular index number' and any other statement referring to exceeding a particular index." *Office Action*, p. 14. Thus, as the Examiner concedes, *Downes* fails to disclose any "bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular index number

before the number of units earned by any other of the plurality of participants exceeds the particular index number" and "determining as the winning participant the participant for which the number of units earned by that participant exceeds the particular index number before the number of units earned by any other of the participants exceeds the particular index number" as required by Claim 28.

Combining *Downes* with *Scarne* fails to remedy these omissions. As Applicants noted in the November 2 Response, *Scarnes* fails to disclose any "bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular index number *before the number of units earned by any other of the plurality of participants exceeds the particular index number*" (underlining and emphasis added) and "determining as the winning participant the participant for which the number of units earned by that participant exceeds the particular index number *before the number of units earned by any other of the participants exceeds the particular index number*" (underlining and emphasis added) as required by Claim 28. The Examiner essentially concedes this fact by noting that an additional modification would be needed to the proposed *Downes-Scarne* reference.

Specifically, the Examiner alleges that:

> It would have been obvious, to one of ordinary skill in the art of gambling to combine Downes with Scarne and to include an ending condition like 'the bettor has to exceed the index before any other bettor.' Since a betting event in Downes's pari-mutuel betting system can have various lengths, one game or a whole season, it would be considered a disfavor to a wining bettor to make them wait until the end of time period to collect their winnings and this also increase the possibility of a winning bettor not having to share the betting pool with other winners.
>
> *Office Action*, p. 14.

Applicants respectfully note that, to establish a prima facie case of obviousness, the Examiner must identify, within the references themselves or the knowledge generally available to one of ordinary skill in the art, a suggestion or motivation to combine the references. M.P.E.P. § 2143. Applicants respectfully submit that the Examiner has provided no reasonable motivation for the proposed modification to the proposed *Downes-Scarne* combination. One skilled in the art would not be motivated to modify the proposed *Downes-Scarne* combination as the Examiner suggests.

In both *Downes* and *Scarne*, the underlying events are tied to set time periods on which the bettors place their bets. Terminating the bet before the end of the event would

favor one bettor at the expense of all others. The modification the Examiner is suggesting is akin to terminating a mile-and-a-half horse race after a quarter mile and paying the bettor who bet on the horse in the lead at that point. This would run contrary to the terms of the bet and would not be considered an improvement by any of the other bettors.

More specifically, as the Examiner notes, *Downes* explicitly teaches that the events are run for set periods, e.g., one game or a whole season. *Office Action*, p. 14. Bettors making the bet expecting to have the event run an entire season would not consider it a "disfavor" to have the game run as was agreed when they placed the bet. Similarly, *Scarne* clearly indicates that its described over/under bet is associated with a betting event having a set duration (e.g., a single game). P. 33, ll. 14-17. Moreover, *Scarne* only offers a single betting line. Thus, everyone making an "over" bet will have a bet associated with the same "over" line, and everyone who makes an "over" bet will win when the "over" line is exceeded. Therefore, terminating the betting event will not do anything to reduce the possibility of a particular winning bettor having to share the betting pool. As soon as one "over" bettor wins, all "over" bettors win. Consequently. the explanation provided by the Examiner fails to identify any motivation to modify the proposed *Downes-Scarne* combination as the Examiner suggests and, in accordance with M.P.E.P. § 2143, the Examiner fails to present a *prima facie* case of obviousness.

As a result, the proposed *Downes-Scarne* combination fails to disclose, teach, or suggest every element of Claim 28. Claim 28 is thus allowable for at least these reasons. Applicants respectfully request reconsideration and allowance of Claim 28 and its dependents.

Although of differing scope from Claim 28, Claim 42 includes elements that, for reasons substantially similar to those disclosed with respect to Claim 28, are not disclosed, taught, or suggested by the cited references. Claim 42 is thus allowable for at least these reasons. Applicants respectfully request reconsideration and allowance of Claim 42 and its dependents.

Claims 5 and 8 depend from Claim 1, while Claims 18 and 21 depend from Claim 17. Claims 1 and 17 have been shown above to be allowable. Claims 5, 8, 18, and 21 are thus allowable for at least these reasons. Applicants respectfully request reconsideration and allowance of Claims 5, 8, 18, and 21.

Double Patenting Rejections

The Examiner provisionally rejects Claims 1-5, 9-11, 14-18, 22, 26, 42, and 45-49 under the grounds of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-23 of copending Application No. 10/667,755 (referred to as "Case B" by the Examiner). As Applicants previously noted, however, none of the claims of Case B are coextensive in scope with that claimed by the present Application. Claim 1 of Case B teaches a method of managing bets comprising, *inter alia*:

> receiving a first bet at a first quote, the first bet having an associated first unit stake, the first quote corresponding with the total number of units potentially earned by a participant in a plurality of events[.]

As Applicants previously noted, Claim 1 of Case B fails to disclose receiving a bet that the total number of units earned by a particular participant "*will fall within a first range of numbers*" (underlining and emphasis added) as recited by Claim 1 of the present Application. Applicants respectfully note that the Examiner ignores the emphasized language and, as a result, fails to address the substance of Applicants' argument with respect to this element. Applicants respectfully remind the Examiner that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and *answer the substance of it*." M.P.E.P. § 707.07(f) (underlining and emphasis added). Applicants request that the Examiner address the substance of Applicants' argument with respect to this aspect of the rejection as required by M.P.E.P § 707.07(f). Moreover, Case B fails to disclose "receiving...a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers" as required by Claim 1.

Furthermore, as Applicants also noted in the November 2 Response, Claim 1 of Case B also fails to disclose receiving a bet that the number of units earned by that participant "will exceed a particular index number *before the number of units earned by any other of the plurality of participants exceeds the particular index number*" as recited by Claim 28 of the present Application. In response to this argument, the Examiner states:

> Case B teaches a bettor winning when their 'quote' exceeds an upper index number and matches the 'total number of units earned by the participant in the plurality of events' (Case B: Claim 2).
>
> *Office Action*, p. 11.

Applicants believe the Examiner has misread Claim 2 of Case B. Claim 2 states that "the first quote *comprises* the upper index number" (emphasis added) and not necessarily that a bettor "win[s] when their 'quote' exceeds an upper index number" as the Examiner suggests. *Office Action*, p. 11. Moreover, Applicants respectfully traverse the Examiner's assertion that "[t]herefore it is implied in Case B's claim language that a bettor has to exceed the index before their competition." Applicant's respectfully note that, even assuming for the sake of argument that the Examiner is correct in asserting that "it would be considered a disfavor to a winning bettor to make them wait until the end of the time period to collect their winning and this also increases the possibility of a winning bettor not having to share the betting pool with other winners," it does not follow that "it is implied in Case B's claim language that a bettor has to exceed the index before their competition" as the Examiner claims. *Office Action*, p. 11. The mere fact that some feature of a particular reference is a "disfavor" does not mean that any and all solutions for eliminating that disfavor are implicitly taught as part of that reference. Thus, Claim 1 of Case B also fails to disclose receiving a bet that the number of units earned by that participant "will exceed a particular index number before the number of units earned by any other of the plurality of participants exceeds the particular index number" as required by Claim 28 of the present Application.

Thus, Claim 1 of Case B (Application No. 10/667,755) is not coextensive in scope with either of Claims 1 and 28 of the present Application. Although of differing scope from Claims 1 and 28, Claims 17 and 42 are, for reasons substantially similar to those discussed with respect to Claims 1 and 28, respectively, not coextensive in scope with the claims of Case B. Claims 1, 17, 28, and 42 are thus allowable for at least these reasons. Applicants respectfully request reconsideration and allowance of Claims 1, 17, 28, and 42, and their respective dependents.

Conclusions

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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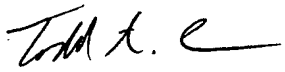
Attorneys for Applicants



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